

## MEMORANDUM

**DATE:** March 11, 2009  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBV 09-006- George F. Drummond, 165 Indian Circle  
-----

Mr. George F. Drummond of 165 Indian Circle filed an appeal to James City County's Chesapeake Bay Board on October 28, 2008. Mr. Drummond is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. That Notice of Violation ordered the removal of unauthorized fill, concrete driveway and retaining wall installed within the Resource Protection Area (RPA) buffer located on his property. Staff has reviewed the unauthorized encroachments and estimates the RPA impacts as: concrete driveway 500 square feet, fill 800 square feet and retaining wall 55 linear feet.

On February 11, 2009, the Board was presented case CBV 09-006, an appeal by Mr. George F. Drummond requesting relief from an administrative order issued by the County. Mr. Lambert B. Logan from Technical Services Group on behalf of Mr. Drummond requested a deferral of the case until March 11, 2009. The Board granted a deferral of the case until March 11, 2009.

Staff met with Mr. Drummond and his consultant onsite to review the existing conditions, and encroachments. Following that meeting a proposed mitigation plan was developed and submitted to the Division on February 27, 2009 for consideration by the Board on March 11, 2009.

Staff has reviewed the mitigation proposal and offers the following information for the Board's consideration.

1. The original administrative exception granted by the Division allowed for up to 400 square feet of new concrete driveway pad to be installed to service the new attached garage. The exception also required the removal of approximately 175 square feet of existing concrete drive.
2. The newly submitted mitigation plan offers to remove 250 square feet of existing concrete driveway now shown and identified as "Area 1 – Concrete Demo" which will occur in the same area as identified in #1 (175 square feet). The net result will be 75 square feet of additional concrete removed. Staff originally estimated that approximately 500 square feet of unauthorized concrete pad was installed, therefore there would still be a net increase of 425 square feet of unauthorized concrete remaining. A second area shown and identified on the new mitigation plan identified as "Area 2 – Concrete Demo 215 SF" is not presently proposed for removal. If "Area 2" were to be removed a further reduction in unauthorized impervious area would result in a minimal net increase of 210 square feet overall ( $425 - 215 = 210$ ).
3. The original exception required the installation of a 100 square foot bio-retention/rain garden planted with native plants and the installation of (6) native canopy trees, (12) native understory trees and (18) native shrubs installed within the RPA buffer to offset for the water quality impacts generated by the authorized impervious areas.
4. The new mitigation plan proposes an increase of onsite bio-retention/rain gardens to offset any adverse water quality impact from additional impervious areas not previously treated. Approximately 930 square feet of bio-retention/rain gardens are now proposed vs. 100 square feet originally required, resulting in a net increase of 830 square feet.

5. The 55 linear feet of unauthorized retaining wall, is proposed to remain in place and be incorporated into a bio-retention facility shown and identified as "BIO AREA 2" on the new mitigation plan.
6. The approximate 800 square feet of unauthorized fill is proposed to remain in place.
7. The increase in bio-retention areas (830 square feet) if properly installed will have a beneficial effect on water quality on this property.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the board vote to grant the appeal, staff offers the following recommendations and guidance for the Board's consideration.

1. The linear nature of bio-retention "Area 1" requires an increase in the number of native plantings for adequate vegetative absorption. The number of plants required for bio-retention areas should equal, 1 native plant for each 10-20 square feet of bio-retention area. The size of plant material should be: shrubs 3-5 gallon container size and trees 6-7 feet in height.
2. The removal of the concrete pad identified as "Area 2 – Concrete Demo- 215 SF" should be required as part of the proposed mitigation plan. A layer of gravel 4" deep may be installed in lieu of the concrete pad when removed.
3. A revised "Mitigation & Restoration Plan, for 165 Indian Circle", incorporating the above changes must be submitted to the Division for approval within 30 days of Board approval.
4. A Chesapeake Bay Restoration Agreement must be executed, along with surety in the amount of \$4,000.00 submitted to the County in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 165 Indian Circle".